

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>April 7, 2011</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
RICHARD WARDY
A/K/A VICKY WARDY,

Plaintiff,

- against -

MICHAEL CARLO, et al.

Defendants.
----- X

08 Civ. 2818 (PAC) (KNF)

ORDER ADOPTING R&R

HONORABLE PAUL A. CROTTY, United States District Judge:

On March 18, 2008, Richard Wardy, a/k/a Vicky Wardy ("Wardy") commenced this 42 U.S.C. § 1983 action, pro se, against Michael Carlo, Peter Curtin, Anthony DiCarlo, Ronnie King, and Joseph Townsend (collectively, "Defendants"). The Court referred general pretrial matters and dispositive motions in the case to Magistrate Judge Kevin Nathaniel Fox on March 25, 2008. (Dkt. 3.) After Wardy failed to properly serve Curtin and DiCarlo within 120 days of filing the Complaint, Magistrate Judge Fox ordered him on January 7, 2009 to effect service on these defendants. A copy of this order was mailed to Wardy and returned to the Court as undeliverable. Wardy has failed to provide the Court with proof of service on these defendants or a correct mailing address.

Wardy timely served the remaining defendants, Carlo, Townsend, and King, none of whom has filed an answer. On January 7, 2009, Magistrate Judge Fox also directed Wardy to make any application he deemed appropriate with respect to these defendants. Wardy has not made any applications.

On February 20, 2009, Judge Fox issued a Report and Recommendation ("R&R"), recommending that the Court dismiss the case under Fed. R. Civ. P. 4(m) and 41(b) for failure to

prosecute. The R&R provided ten days for written objections, pursuant to 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b).¹ No objections have been filed.

A district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record.” Feehan v. Feehan, No. 09 Civ. 7016 (DAB), 2011 WL 497776 at *1 (S.D.N.Y. Feb. 10, 2011).

Finding no clear error, the Court adopts Judge Fox’s R&R in full and dismisses Wardy’s claims against all defendants. The Clerk of Court is directed to terminate this case. Pursuant to 28 U.S.C § 1915(a), any appeal from this order would not be taken in good faith.

Dated: New York, New York
April 7, 2011

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copies Mailed To:

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¹ The provisions have since been amended to allow fourteen days to file objections.